

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DAWN WILSON,	*	C.A. No.:
	*	
Plaintiff,	*	
	*	<b>TRIAL BY JURY DEMANDED</b>
v.	*	
	*	
DELSTAR TECHNOLOGIES, INC., a	*	
Delaware corporation,	*	
	*	
Defendant.	*	

**COMPLAINT**

1. Plaintiff Dawn Wilson is a resident of the State of Delaware.

2. Defendant DelStar Technologies, Inc., is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act and the Family and Medical Leave Act.

4. Jurisdiction is conferred on this Court by 42 U.S.C. §2000e-5(f)(3), 29 U.S.C. §2617, and by 28 U.S.C. §1343.

5. This Court has pendent jurisdiction over Plaintiff's State law claims pursuant to 28 U.S.C. §1367.

6. Venue for all causes of action stated herein lies in the District of Delaware, as the acts alleged as the bases for these claims took place within the boundaries of that District.

7. Plaintiff brings the action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq*; under 42 U.S.C. §1981; under the Family and Medical Leave Act ("the FMLA") 29 U.S.C. §2601 *et seq.*; and under the indicated State law causes of action, to redress the wrongs done to her by Defendant's discrimination against her on the basis of her race and retaliation against her.

8. Plaintiff timely submitted a complaint of discrimination on the basis of race to the Equal Employment Opportunity Commission ("EEOC").

9. Plaintiff has received a Notice of Right to Sue for the above-referenced charge from the EEOC.

10. Plaintiff has timely filed this Complaint within 90 days of her receipt of the Notice of Right to Sue.

11. Plaintiff's race is black.

12. Plaintiff, at all times relevant to this Complaint, was an "eligible employee" as that term is defined by the FMLA, in that she had been employed by Defendant for at least 12 months, and for at least 1,250 hours of service during the previous 12-month period, prior to her exercise of her rights under the FMLA.

13. At all times relevant to this Complaint, Plaintiff was employed by Defendant at its manufacturing location in Middletown, Delaware. Plaintiff began her employment with Defendant in or about November 1999, and she was terminated by Defendant in March 2006.

14. In the years leading up to 2006, Plaintiff suffered discrimination and harassment on the basis of her race by her

white supervisors, including but not limited to unjust discipline, failure to allow Plaintiff to work a flexible schedule due to daycare constraints when white employees were allowed to work such schedules, discriminatory enforcement of dress code requirements against Plaintiff, and discriminatory denial of production assistance to Plaintiff.

15. Plaintiff suffered a work-related injury on or about February 8, 2006. Following her work-related injury, Plaintiff suffered increased harassment and retaliatory treatment.

16. When Plaintiff was required to undergo surgery as a result of the injury and was forced to miss work, she suffered unjust discipline.

17. On or about March 13, 2006, Plaintiff was required to leave work due to her husband's serious health condition. Her immediate supervisor gave her permission to leave work for this reason. The following morning, Plaintiff was required to transport her husband for medical testing, and she called in and informed agents of Defendant that she would not be able to report to work for this reason. When Plaintiff called in later that day and spoke with her supervisor, she was terminated.

18. At all times relevant to the Complaint, Plaintiff was qualified for her job position and satisfactorily performed all duties of her job position.

19. During her employment, Plaintiff suffered differential treatment based upon her race.

20. Following her work-related injury, Plaintiff also suffered differential treatment and retaliation due to Plaintiff's

attempts to seek benefits under the workers' compensation laws of the State of Delaware.

21. Plaintiff also suffered retaliation due to her attempts to exercise her rights under the FMLA.

22. The wrongful acts committed by Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

23. As a direct result of the actions of Defendant, Plaintiff has suffered damages, including but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

**COUNT I - TITLE VII**

24. Plaintiff restates and hereby incorporates by reference paragraphs 1 through 23 of this Complaint.

25. By committing the aforementioned acts, Defendant has discriminated against Plaintiff on the basis of her race in violation of 42 U.S.C. §2000e et seq.

26. As a direct result of the discriminatory conduct of Defendant, Plaintiff has suffered damages, including but not limited to, physical and emotional injury, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against Defendant for:

(a) Back pay, including interest;

(b) Compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, lost of enjoyment of life, and all other non-pecuniary damages;

(c) Punitive damages;

- (d) Pre-judgment and post-judgment interest;
- (e) Attorney's fees and costs;
- (f) Reinstatement, if feasible, or, in the alternative, front pay; and
- (g) Any other relief that this Court deems just.

**COUNT II - 42 U.S.C. §1981**

27. Plaintiff hereby restates and incorporates by reference 1 through 26 herein above.

28. By committing the aforementioned acts, and specifically by discriminating against Plaintiff on the basis of her race, Defendant has violated 42 U.S.C. §1981.

29. As a direct result of the discriminatory conduct of Defendant, Plaintiff has suffered damages, including but not limited to, physical and emotional injury, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against Defendant for:

- (a) Back pay, including interest;
- (b) Compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, lost of enjoyment of life, and all other non-pecuniary damages;
- (c) Punitive damages;
- (d) Pre-judgment and post-judgment interest;
- (e) Attorney's fees and costs;
- (f) Reinstatement, if feasible, or, in the alternative, front pay; and
- (g) Any other relief that this Court deems just.

**COUNT III - FMLA**

30. Plaintiff hereby restates and incorporates by reference 1 through 29 hereinabove.

31. Defendant retaliated against Plaintiff, wrongfully disciplined her, and wrongfully discharged her, in retaliation for Plaintiff's exercise of, and attempts to exercise, her rights under the FMLA.

32. Defendant has wrongfully interfered with, restrained and denied Plaintiff exercise of and attempts to exercise her rights under the FMLA.

33. The wrongful acts committed by Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith, and Defendant had no reasonable grounds for believing that its wrongful acts were not in violation of the FMLA.

34. As a direct result of the wrongful and discriminatory conduct of Defendant, Plaintiff has suffered lost wages and other damages.

WHEREFORE, Plaintiff demands judgment against Defendant for:

(a) Any and all damages provided by 29 U.S.C. §2617(a)(1), including but not limited to lost wages, salary, employment benefits, back pay, front pay, interest, liquidated damages, and any and all other available pecuniary damages;

(b) Pre-judgment and post-judgment interest;

(c) Attorney's fees and costs;

(d) Reinstatement, if feasible, or in the alternative, front pay; and

(e) Any other relief, whether legal or equitable, that this Court deems just and appropriate.

**COUNT IV - 19 DEL. C. §2365**

35. Plaintiff hereby restates and incorporates by reference 1 through 34 hereinabove.

36. Defendant retaliated against Plaintiff, harassed her, and subjected her to discriminatory treatment because of her decision to pursue worker's compensation benefits.

37. Said acts by Defendant constituted retaliation and discrimination against Plaintiff in violation of 19 Del. C. §2365.

38. As a direct result of the discriminatory, retaliatory, and harassing conduct of Defendant, Plaintiff has suffered damages, including but not limited to physical and emotional injury, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against Defendant for:

- (a) Back pay, including interest;
- (b) Compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, lost of enjoyment of life, and all other non-pecuniary damages;
- (c) Punitive damages;
- (d) Pre-judgment and post-judgment interest;
- (e) Attorney's fees and costs;
- (f) Reinstatement, if feasible, or, in the alternative, front pay;
- (g) Any other relief that this Court deems just; and

(h) Payment by Defendant of the penalty provided in 19  
Del. C. §2365 to the Worker's Compensation Fund.

SCHMITTINGER & RODRIGUEZ, P.A.

BY: 

NOEL E. PRIMOS, ESQUIRE  
Bar I.D. #3124  
414 S. State Street  
P.O. Box 497  
Dover, DE 19903  
(302) 674-0140  
Attorneys for Plaintiff

DATED: 4-18-07  
NEP:rp



JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS Dawn Wilson**

(b) County of Residence of First Listed Plaintiff Kent  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Noel E. Primos, Esquire, Bar I.D. #3124  
Schmittinger & Rodriguez, P.A.  
414 S. State Street, P.O. Box 497  
Dover, DE 19901 phone: (302) 674-0140

**DEFENDANTS DelStar Technologies, Inc., a Delaware Corp.**

County of Residence of First Listed Plaintiff N/A  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place and "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395 ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access To Justice <input type="checkbox"/> 950 Constitutional of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing / Accommodations <input type="checkbox"/> 445 Amer. W/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 2000e et seq.; 42 U.S.C. § 1981; 29 U.S.C. § 2601 et seq; 19 Del.C. § 2365.

Brief description of cause:

Plaintiff seeks to redress discriminatory and retaliatory treatment by Defendant on basis of her race, and for pursuing her statutory rights.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE April 18, 2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE